LIBRARY
SUPREME COURT, U.S.

Office-Supreme Court, U.S.
FILED
APR 12 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 1059

ALFRED D. LAURENCE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOSEPH J. LYMAN
Counsel for Petitioner
1200 - 18th Street, N.W.
Washington, D. C.

JACOB A. STEIN
Counsel for Petitioner
1200 - 18th Street, N.W.
Washington, D. C.

WILSON - EPES PRINTING CO. - RE 7-6002 - WASHINGTON 1, D. C.

INDEX

	Page
Opinion Below	1
Jurisdiction	2
Questions Presented	2
Statement	2
Reasons For Granting Writ	3-4-5
Conclusion	6
Appendix	7
A. Opinion of Fifth Circuit Court of Appeals	7
B. Trial Courts Instruction	8
C. Tendered Instructions	9

TABLE OF CASES

Carter v. *United States* 325 F.2d 697	5
Currens v. *United States* 290 F.2d 751	3
Davis v. *United States* 160 U.S. 469	2
Durham v. *United States* 214 F.2d 862	3, 4
Howard v. *United States* 232 F.2d 274	3, 4
Matheson v. *United States* 277 U.S. 540	2, 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No.

ALFRED D. LAURENCE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

To the Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

Alfred D. Laurence, the petitioner herein, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above case on the 25th day of February 1965.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit which is not yet reported is printed in Appendix A, page 7.

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on February 25, 1965, (Appendix A, page 7). Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). Extension granted by Mr. Justice Black to April 12, 1965.

QUESTIONS PRESENTED

1. Does the administration of criminal justice now require that a uniform rule which rejects the right-wrong test be adopted for determining the criminal responsibility of mental defectives.

2. Whether the Fifth Circuit has misconstrued the rule of *Davis* v. *United States* 160 U.S. 469 (1895) as commanding it to adopt the narrow and restrictive right-wrong test when in fact *Davis, supra,* and *Matheson* v. *United States* 277 U.S. 540 (1913) enunciate a test which encompasses a broad examination of the general behavior of the mentally ill defendant.

STATEMENT

Alfred D. Laurence was convicted in the United States District Court for the Southern District of Florida on June 7, 1963, (R. 1221) for violations of the mail fraud statute (18 U.S.C. § 1341), Section 17(a)(1) of the Securities Act of 1933 (15 U.S.C. § 77q(a)(1)) (R. 1137, et seq); and conspiracy to violate those sections as well as Section 5(a) of the Securities Act of 1933 (15 U.S.C. §§ 77e(a)(1), 77e (a)(2) and 77e (c)). (R. 1172-1179).

The trial commenced in January 1962 but was discontinued upon a finding by the trial judge that Mr. Laurence was mentally incompetent to understand the nature of the proceedings and mentally incompetent to properly assist in the preparation and conduct of his

defense. Mr. Laurence was placed under mental observation at the Medical Center for Federal Prisoners at Springfield, Missouri. On August 2, 1962, he was found competent to stand trial and he was released.

The prosecution was resumed on April 1, 1963 before the Honorable David W. Dyer, United States District Judge and a jury. (R. 3-4)

At the trial Mr. Laurence raised the defense of insanity. The trial judge instructed the jury in accordance with the right-wrong test (R. 1110). The defense objected to this instruction and tendered instructions framed in accordance with the law of two other Federal circuits, namely, the District of Columbia Circuit and the Third Circuit which circuits have renounced the right-wrong test. The tendered instructions were rejected by the trial judge. (R. 1225-1227) The instructions as given are reprinted in Appendix B, page 8; the instructions tendered are reprinted in Appendix C, page 9.

The right-wrong instruction was challenged by the defendant in his appeal to the Fifth Circuit Court of Appeals. In affirming the conviction the Fifth Circuit Court of Appeals approved the right-wrong instruction on the authority of *Howard* v. *United States*, 232 F.2d 274. (See Appendix "A", p. 7).

REASONS FOR GRANTING THE WRIT

The Fifth Circuit, in approving the right-wrong test for determining criminal behavior places itself in conflict with decisions of other circuits and specifically the United States Court of Appeals for the District of Columbia, *Durham* v. *United States*, 214 F.2d 862 (CADC, 1954); and the Court of Appeals for the Third Circuit, *Currens* v. *United States*, 290 F.2d 751 (CA-3, 1961).

Currens and *Durham* have renounced the restrictive right-wrong test in favor of an inquiry which allows

the jury to receive the benefit of a broad scientific consideration of the defendant's behavior. The right-wrong test disposes of the issue of criminal responsibility by seeking the answer to a single question placed on a moral basis. *Currens* and *Durham* rely for guidance upon the settled knowledge of the behavioral sciences in the field of mental disorders. A quotation from Durham is pertinent:

> We find that as a exclusive criterion the right-wrong test is inadequate in that it does not take sufficient account of psychic realities and scientific knowledge, and (b) it is based on one symptom and so cannot validly be applied in all circumstances . . . We conclude that a broader test should be applied.
>
> (*Durham* v. *United States*, *supra*, 214 F.2d 862, at page 3)

The trial court (R. 1110) as well as the Court of Appeals for the Fifth Circuit bound itself by *Howard* v. *United States*, 232 F.2d 274 which follows the right-wrong test. *Howard* in turn rests itself on *Davis* v. *United States*, 160 U.S. 469 (1895). But *Davis* did not command an adoption of the right-wrong test, even in 1895. After *Davis* this Court decided *Matheson* v. *United States*, 277 U.S. 540 (1913), a homicide case in which the defense of insanity was raised. The trial judge instructed the jury in accordance with the right-wrong test and then added:

> If you believe the shooting was the direct result or offspring of insanity, you should acquit, if of passion or revenge, you should convict.

This language is the *Durham Rule* stripped of all it glosses.

This Court has not examined since 1913 the questions raised by the insanity defense. The rulings of *Davis* and *Matheson* are now being accorded contradictory interpre-

tations. Most circuits rely on them to justify an adherence to the right-wrong test. However, the United States Court of Appeals for the District of Columbia and the Court of Appeals for the Third Circuit interpret these same cases as placing them under no mandate to continue with the outmoded right-wrong test.

The right-wrong test was evolved at a time when vindictiveness and retribution were the only philosophies for dealing with offenders. From the inception of M'Naghten to the present day there has unfolded another philsophy, that of rehabilitation. The tests advocated in *Durham* and *Currens* foster treatment and rehabilitation of the sick rather than sterile punishment, implicit in *M'Naghten.*

The national importance of the issue posed by this case is demonstrated by comments of the Courts seeking a uniform rule for the mentally disordered criminal.[1] Furthermore, there are many studies being conducted, both private and government, focusing on the problem.[2] Now would be an appropriate time for this Court to announce a uniform rule concerning criminal responsibility to govern Federal Courts and to guide state courts.

---

[1] See *Carter* v. *U.S.* 325 F2d 697 (1963) at page 706 (dissent Brown, J.: It is time—and when the Court voted to hear the case en banc, I suppose that all of us thought this would be the time—for the full Court to give critical review to this important problem of federal criminal law. But an inability to muster a majority out of the Judges sitting has again postponed this day. Perhaps offsetting the awesome consequence that this particiular appellant has something substantively less than the appeal as a matter of right which 28 U.S.C.A. § 1291; F.R. Crim.P. 37, affords him, *is the possibility that this impasse will, in part, impel acceptance of this case for review by the Supreme Court. There are many experienced in this field as lawyers, as teachers, and District Judges on the firing line who think that the 66 years since 1897 is long enough to warrant a second, if not a new, look at this pressing recurring problem.* (Emphasis supplied; foot-notes deleted)

[2] "Application of Psychiatry to Study, Observation and Treatment of the Federal Offender" by Judge John W. Oliver, 35 F.R.D. 459.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

JOSEPH J. LYMAN
Counsel for Petitioner

JACOB A. STEIN
Counsel for Petitioner

APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20690

ALFRED D. LAURENCE AND JOHN W. H. PRICE,
Appellants,

versus

UNITED STATES OF AMERICA,
Appellee.

Appeal from the United States District Court for the Southern District of Florida.

(February 25, 1965.)

Before TUTTLE, Chief Judge, JONES, Circuit Judge, and GROOMS, District Judge.

PER CURIAM: The appeal of these two defendants from Securities Act and Mail Fraud charge convictions and sentences raises only the general issue as to sufficiency of the evidence to sustain a verdict of guilt.

We find abundant evidence to warrant submission of the case of both appellants to the jury.

We also find that the defense of insanity interposed by Laurence was presented to the jury on a proper charge. *Howard* v. *United States*, 232 F. 2d. 274.

The judgment is AFFIRMED.

APPENDIX B

(Trial Court's Instruction)

You are instructed that there has been introduced into evidence on behalf of the defendant Laurence evidence which tends to prove that at the time of the commission of the alleged offense here involved, the defendant was suffering from a mental defect or disease. You are further instructed that if the whole evidence presented to you does not exclude beyond a reasonable doubt the hypothesis of mental illness, as I shall explain in my next instruction, you should find the defendant not guilty.

If you find that due to mental illness at the time of the alleged crime, the defendant Laurence did not know the difference between right and wrong or was unable to refrain from doing wrong, you must acquit him. Only if you find from all of the evidence beyond a reasonable doubt that he was sane or if mentally ill, that he knew the difference between right and wrong and was able to refrain from doing wrong, may you convict him.

APPENDIX C

(Defendant's Tendered Instructions)

No. 1

You are instructed that if you find from the evidence that at the time of committing the act charged, the defendant, as a result of disease of mind (or mental deficiency) (a) did not know the nature and quality of the act or (b) did know that it was wrong or (c) that he was incapable of preventing himself from committing the act, then you must acquit him.

No. 2

You are instructed that in determining the guilt or the innocence of this defendant you may consider that a person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

No. 3

If you the jury believe beyond a reasonable doubt that the defendant, Laurence, was not suffering from a disease of the mind at the time he committed the criminal act charged, you may find him guilty. If you believe that he was suffering from a disease of the mind, but believe beyond a reasonable doubt that at the time he committed the criminal conduct with which he is charged he possessed substantial capacity to conform his conduct to the requirements of the law which he is alleged to have violated you may find him guilty. Unless you believe beyond a reasonable doubt that Laurence was not suffering from a disease of the mind or that despite that disease he possessed substantial capacity to conform his conduct to the

requirements of the law which he is alleged to have violated you must find him not guilty by reason of insanity. Thus, your task would not be completed upon finding, if you did find, that the accused suffered from a disease of the mind. He would still be responsible for his unlawful act if you found beyond a reasonable doubt that at the time he committed that act, the disease has not so weakened his capacity to conform his conduct to the requirements of the law which he is alleged to have violated that he lacked substantial capacity to conform his conduct to the requirements of that law. These questions must be determined by you from the facts which you find to be fairly deducible from the evidence in this case.

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 1059

ALFRED D. LAURENCE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 7) is reported at 341 F.2d 565.

JURISDICTION

The judgment of the court of appeals was entered February 25, 1965. The time to file a petition for a writ of certiorari was extended by Mr. Justice Black to April 12, 1965, and the petition was filed on

that day. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the instruction on the issue of mental competency was proper in view of the nature of the evidence on that issue which was tendered in this case.

STATEMENT

Petitioner was convicted in the United States District Court for the Southern District of Florida on seventeen counts charging violations of the Securities Act of 1933, mail fraud, and conspiracy. He was given concurrent sentences of two years' imprisonment on each count; sentence was suspended and petitioner was placed on probation for five years on the condition that he pay the fine of $500 on each count (a total of $8500) at the rate of $2000 per year (R. 1221-1222). The court of appeals affirmed the conviction.

No issue is raised with respect to the sufficiency of the evidence. In general, the indictment charged (R. 1137-1179), and the evidence showed, that a group of persons (other than petitioner) gained control of the Columbus-Rexall company in February, 1956, and by increasing the authorized capitalization and by various mergers with other companies obtained large quantities of stock which were sold to the public with promotional material containing many misrepresentations. From July, 1956, to October, 1957, petition-

er's company, which employed salesmen using high pressure methods to sell stock, sold "over the counter" to the public approximately a million shares of Columbus-Rexall stock (R. 654-658). A research analyst, hired by petitioner in April, 1957, told petitioner that he did not believe from the available material that this was a suitable issue for sale (R. 608-613).

In addition to defending on the ground that he had acted in good faith, petitioner offered the defense of mental incompetency. The testimony, both for the petitioner and for the government in rebuttal, came, for the most part, from psychiatrists who had examined petitioner in or after March, 1962, during the course of a prior abortive trial for the same offenses. (R. 760-762, 812, 988, 1005-1006).[1] The psychiatrists also had the records of petitioner's claim for disability and treatment as an out patient by the Vet-

---

[1] During the eighth week of trial, petitioner moved to release his counsel and represent himself. On March 21, 1962, petitioner moved for a mistrial on the ground that he had been incompetent when he moved for the court to proceed without counsel. After having petitioner examined by psychiatrists, the district court denied the motion for a mistrial on March 27, 1962 (R. V. 2-8). However, on April 2, 1962, after petitioner had not appeared on March 30, and it was learned that he had been admitted to the Veterans' hospital, the judge came to the conclusion that petitioner was suffering from mental exhaustion and was unable to participate in his defense. The trial was severed as to petitioner (R. 1190-1195). Petitioner was subsequently transferred to the United States Medical Center at Springfield (R. 761, 1009). In August, 1962, he was pronounced competent to assist in his defense (R. 1201-1202).

erans Administration after his discharge from the Air Force in the period between 1946 and 1950. (R. 759-760, 812, 819-822, 988-989, 1007, 1214). Since there was no record of any treatment of petitioner during the period between 1950 and 1962, all the psychiatrists who testified admitted that it was difficult to give an opinion with certainty as to petitioner's mental condition in the period at issue, 1956-1957 (R. 776, 778, 780, 830-831, 991, 1002, 1007).

The medical evidence favorable to petitioner's claim of insanity was as follows. The Veterans Administration file showed that petitioner had been classified as suffering from "psychoneurosis hysteria in a schizoid type of individual" (R. 765). A psychiatrist testifying for petitioner explained that a schizoid individual is a variant of normal personality and that a schizoid is not necessarily ill (R. 766, 829-830). Such an individual has a tendency to be withdrawn and live in a dream world (R. 766). This doctor had difficulty with the diagnosis of hysteria in a schizoid individual, being of the view that if there was enough of a split to be termed hysteria, this would represent latent schizophrenia (R. 767). He thought such a man would have had a severe personality disturbance from early childhood of which he would never be free (R. 770). When such a person was "high" he would be attractive to a number of persons because of his expansiveness and grandiosity (R. 772). The doctor also described a manic-depressive personality, a condition where a person has a false sense of well being and is often a highly-successful salesman (R. 772-774). The doctor thought it was possible that peti-

tioner was in a high period in 1956 and 1957 and was unable to tell right from wrong (R. 776-778), although at times he probably could (R. 778-779). Another psychiatrist who had seen petitioner in March 1963, before the present trial (R. 812), testified that in his view petitioner suffered from a manic depressive psychosis which he had had for many years (R. 817, 824). Persons suffering from this condition do not ever recover completely (R. 825). He testified, as had the other psychiatrist, that such persons often make very good salesmen (R. 817-819). A person suffering from that condition could not distinguish right from wrong (R. 824, 826-827).

The physicians called by the government testified that the Veteran's Administration diagnosis of 1950 was essentially that of neurotic and was consistent with the impression they formed in 1962 (R. 991-992, 1011-1012). Petitioner knew the difference between right and wrong (R. 992, 1007-1008). At the time of his examination in March, 1962, he was exhausted (R. 994) and in a psychotic depression (R. 1010, 1012). One of the government doctors testified on cross-examination that petitioner would be easily misled by others and would take refuge in fantasies (R. 995-996). He felt, however, that petitioner was of the schizoid type "which is almost the opposite of the manic depressive type" (R. 998).

In addition to the psychiatric testimony, petitioner offered the testimony of a banker who was also in the securities field and who had seen petitioner on one occasion during 1956 or 1957 and had spoken

with him on four or five occasions. At the time of the meeting, petitioner was already in difficulties with the S.E.C. The banker stated that petitioner appeared to be under great strain and made irrational statements about the company (R. 749-757).

The judge charged the jury (R. 1110, Pet. App. B):

> You are instructed that there has been introduced into evidence on behalf of the defendant Laurence evidence which tends to prove that at the time of the commission of the alleged offense here involved, the defendant was suffering from a mental defect or disease. You are further instructed that if the whole evidence presented to you does not exclude beyond a reasonable doubt the hypothesis of mental illness, as I shall explain in my next instruction, you should find the defendant not guilty.
>
> If you find that due to mental illness at the time of the alleged crime, the defendant Laurence did not know the difference between right and wrong or was unable to refrain from doing wrong, you must acquit him. Only if you find from all of the evidence beyond a reasonable doubt that he was sane or if mentally ill, that he knew the difference between right and wrong and was able to refrain from doing wrong, may you convict him.[2]

---

[2] Petitioner's tendered instructions (R. 1225-1227) are set forth in Appendix C of the petition for a writ of certiorari.

ARGUMENT

Petitioner asks the Court to review this case as a vehicle for laying down a general rule which will apply in all cases where the defense of mental competency is raised in the federal courts. We suggest, however, that this is a particularly inappropriate case for that purpose because of the nature of the defense which was tendered in this case. The defense of insanity as raised in this case is not the norm. There was no question here but that petitioner was intelligent and knew that he was selling stock; that he was able to conduct a business, consult with his attorney, hire salesmen, discuss a merger, etc. None of the psychiatric testimony adduced by petitioner (either on direct examination of the psychiatrists who testified for him or on cross-examination of those who testified for the government) was directed to establishing that petitioner was without substantial capacity to conform his conduct to the requirements of the right even though he might know the difference between right and wrong. The whole thrust of petitioner's insanity defense was that, because of his assumed manic-depressive condition, with its tendency to flights of fancy and delusions of grandeur, petitioner did not know the difference between right and wrong when he engaged in his stock-selling activities. This was a potentially meaningful defense in relation to the charge here, where petitioner was charged with being (as what his psychiatrists testified such personalities frequently are) a super-salesman who sold stock with exaggerated claims of its present value and potentialities for

the future. It also had the virtue of being entirely consistent with petitioner's other defense that he acted in good faith. But, having drawn the issue essentially in terms of petitioner's ability to know the difference between right and wrong, petitioner is in no position to complain because the judge in his charge couched his instructions in those terms.

The judge's charge, although short, was adequate to put the issue as framed in focus for the jury. The jury was told that they had to decide beyond a reasonable doubt either that petitioner was sane, (*i.e.*, not mentally ill) or that, if mentally ill, "he knew the difference between right and wrong and was able to refrain from doing wrong". This latter part "able to refrain from doing wrong" is merely another way of phrasing the idea which petitioner sought to incorporate in his proposed instructions, phrased by him either as "incapable of preventing himself from committing the act" (Tendered Instruction No. 1, Pet. App. C), or lack of capacity to conform his conduct to the requirement of the law (Tendered Instructions No. 2 and 3, Pet. App. C). Considering the lack of any evidence tending to show any incapacity to conform, or refrain from doing wrong, the instruction given may well have gone beyond what was required by the particular facts of this case.

The present state of federal decisions with respect to the defense of mental incompetency was discussed in some detail in the government's brief in opposition to the petition for a writ of certiorari in *Korman* v. *United States*, No. 993 Misc., O.T. 1963. As we there pointed out, a basic consensus has developed in the

federal decisions. While the phraseology may differ somewhat in the instructions approved in the various circuits, the same general underlying principles are emerging in all the circuits which have been called upon to deal with the issue. There is a general recognition that a formulation of the insanity rule should be a means of allowing the jury to hear full psychiatric testimony concerning the mental condition of the accused. That was done here. And there is general recognition that, if this is done, then the exact formulation by which the issue is presented to the jury may vary so long as it includes the basic elements of cognition, volition, and capacity to control behavior. See *Feguer* v. *United States*, 302 F. 2d 214, (C.A. 8), certiorari denied, 371 U.S. 872. Here there was no issue as to cognition; petitioner unquestionably knew what he was doing. The elements of volition and capacity to control were submitted to the jury with a proper emphasis on the element of knowledge of right and wrong, which was the way in which the issue had developed in the evidence. Hence the instruction given was appropriate to the particular facts of this case.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.
FRED M. VINSON, JR.,
Acting Assistant Attorney General.
BEATRICE ROSENBERG,
Attorney.

MAY 1965

☆ U. S. GOVERNMENT PRINTING OFFICE: 1965 773257 800